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# AGENDA:

GOVERNMENT DOCUMENTS  
COLLECTION

## ELDERLY

### **ATTORNEY GENERAL AWARDS NEW VANS TO SIX COUNCILS ON AGING**

**A**ttorney General Scott Harshbarger awarded new vans to six local Councils on Aging at a ceremony held on March 15th, at the Saugus Council on Aging. The Saugus, Chicopee, Easton, Millis, Shelburne and Stow Councils each received a van.

Funding for the vans was obtained through a consent judgment of approximately \$500,000 reached with Visone Motors, Inc., a Saugus used car dealer.

Visone is a nationwide seller of used Corvettes. In November, 1993, Harshbarger's office filed a complaint against Visone, alleging violations of the Massachusetts Consumer Protection Act. These alleged violations included:

- misleading consumers regarding whether they were buying or leasing a vehicle;
- misrepresenting that vehicles had been prepped prior to delivery, when the vehicles were in poor condition;
- failing to repair vehicles and honor warranties; and
- aggressively repossessing vehicles from consumers who withheld payments because of complaints about the condition of the vehicles.

The settlement earmarked \$180,000 for the purchase of 12 new vans to be donated to the Massachusetts Association of Councils on Aging (MCOA), which selected the first six Councils to receive the vans. MCOA will select six additional Councils as van recipients at a future date.

In addition to the donation of the vans, Visone agreed to pay \$230,000 in civil penalties and \$40,000 to the Attorney General's Local Consumer Aid Fund.

Assistant Attorney General George K. Weber, Chief of Harshbarger's Consumer Protection and Antitrust Division, and Andree Gagnon, of Harshbarger's Public Protection Bureau, are handling the matter. James Simmons and Michael Mozzer, of the Civil Investigation Division, assisted in the case.



To the Citizens of the Commonwealth:

When elected Attorney General I embarked on an ambitious agenda to ensure the protection of our elder citizens.

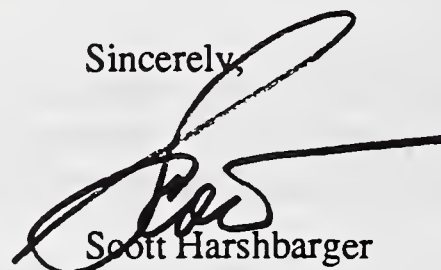
Over the past three years, many divisions within the Attorney General's office have forged new relations to educate, inform and protect our older Americans in every facet of their lives. Some of those initiatives and formative cases are highlighted in this volume of AGenda: Elderly. From prosecuting nursing home abuse and neglect -- to cracking down on scam artists who prey upon our elder consumers -- to educational and informative conferences for elder consumers, advocates and providers, we have established a solid record of elder advocacy.

Not only has the Medicaid Fraud Control Unit (MFCU) and Economic Crimes Division established an impressive prosecution record but the entire office, under the Family and Community Crimes Bureau leadership, has worked to develop and strengthen our prevention efforts which serve as national models to other Attorney Generals. One of our most successful models has been the Elderly Protection Project which continues to educate law enforcement officers about protecting seniors.

This issue of AGenda: Elderly examines other affirmative litigations dealing with hearing aid advertisement/sales practices, and updates on legislative initiatives on the abuse protection law and the patient abuse and neglect statute. Moreover, this issue's case section outlines a nursing home abuse and neglect prosecution where, for the first time, the Attorney General prosecuted a nursing home care giver for violating the civil rights of an elder nursing home resident.

As always, I welcome your comments and suggestions and continue to urge you to contribute to the success of this newsletter by submitting articles or other items you would like to share.

Sincerely,



Scott Harshbarger

## Inside this issue...

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# ELDER PROTECTION PROJECT UPDATE

The Elder Protection Project has been successfully meeting its objectives: trainings have been timely and well received and community outreach and legislative efforts have enhanced the Project's overall effectiveness.

## *Advanced Training*

The Elder Protection Project has conducted thirteen advanced trainings for 400 police officers, 50 protective service workers and 15 other related professionals.

These two day seminars have been significantly refined over the course of the Project and include new case studies and greater participation by protective service workers. Officers appreciate the balance between lecture (during the first day) and interaction (during the second day). For example, in the Fall River training, officers and protective service workers discussed how a homeless elder received no help on Thanksgiving and how such a system breakdown could be avoided in the future. At the training in Southborough, confidentiality issues provoked a spirited discussion between police and protective service workers, each of whom developed a better understanding of the other group's perspective. West Brookfield Police Officer Ronald Newton explained, "Like most cops, I came in cynical. But there really is something here, and I am going to give protective services a chance to work with these people."

## *Recruit Training*

To date, the Project has trained 680 police recruits at ten different training sites. Before the end of June, 1994, between 150 and 200 other recruits will be trained.

## *In-Service Training*

The Project is in the process of preparing a lesson plan and train-the-trainer program which will be implemented during next year's in-service cycle. Currently, the Project has introduced a special handout that will be distributed to all Boston Police officers during their 1994 in-service training. These materials provide key phone numbers, explain officers' mandatory reporting obligations concerning elder abuse, and explain proper procedure when dealing with Alzheimer's patients.

## *Community Education/Legislative Initiatives*

The Project views media relations as a vital component of its overall mission -- to train police officers to see their response to the elderly as part of their overall commitment to community policing. Media relations foster that goal in three ways: First, police departments will embrace their community service role more readily if they receive favorable coverage for their efforts. That is why the Project, in all its discussions with the media, highlights examples of successful policing efforts. Second, the media benefits from having a broader perspective of the police and their multi-faceted roles. Third, the media can be very effective in educating the public about elder issues.

Among other outreach activities, Project Director John Scheft has served on the Advisory Board of the Police Executive Research Forum (PERF) for PERF's project on *Improving the Police Response to Domestic Elder Abuse*. This project resulted in the creation of elder abuse training materials for national distribution.

(Continued on page 5)



# TWELVE ATTORNEYS GENERAL COMMENT ON HEARING AIDS TO FDA

Attorney General Scott Harshbarger joined with the Attorneys General of Arizona, Florida, Illinois, Minnesota, Missouri, New Mexico, New York, North Carolina, Pennsylvania, Texas, Vermont and Wisconsin in offering comments to the United States Food and Drug Administration (FDA) on requirements for hearing aids.

Noting that their offices have collectively received hundreds of complaints from consumers concerning the advertisement and sale of hearing aids, the Attorneys General offered recommendations to the FDA on future requirements for hearing aid sales and related services.

"The elderly and the hearing impaired comprise some of the more valuable segments of our society," said Attorney General Harshbarger. "They are vulnerable because they rely upon the availability and use of hearing aids to allow them to carry out every-day activities that many of us take for granted. That is why it is so critical that state and federal entities insist upon standards for providers of hearing aids, and the sales practices in which they engage. The FDA's invitation for comments is the first important step in achieving that goal."

Included in the areas of concern for the Attorneys General were a desire to reach a national uniform hearing test to determine the need for a hearing aid, as well as standards for those professionals who conduct hearing evaluations. The Attorneys General also emphasized the significance of informing consumers of possible medical problems detected during a hearing evaluation, and the vital need for an evaluation, especially for those consumers being evaluated for a first hearing aid.

Also of importance to the Attorneys General is the need for protection of consumers in the context of mail order hearing aid sales, and whether these are, in fact, in the best interest of consumers.

The Attorneys General urged the FDA to require an examining professional to inform the consumer that he or she may purchase a hearing aid from any hearing aid dispenser, and not solely at the examining professional's place of business. In addition, the Attorneys General encouraged the FDA to permit states to set licensing requirements for hearing health professionals, and to be permitted to enforce all federal and state hearing aid laws.

## NEWSLETTER CONTRIBUTION

We hope this newsletter is both informative and useful. Its success depends upon your input. We must join together to combat abuse against elders in our society. The next issue of the elder newsletter will be published in August 1994. Contributions to the newsletter are accepted through the first week of July. Contributions to the newsletter can be forwarded to:

Erin O'Sullivan  
Publications Coordinator  
Attorney General's Office  
One Ashburton Place  
Boston, MA 02108.



## **HARSHBARGER RECEIVES FIRST ANNUAL NATIONAL ACADEMY OF ELDER LAW ATTORNEYS PUBLIC SERVICE LAW AWARD**

**A**ttorney General Scott Harshbarger received the first annual Public Service Elder Law Award on November 30, 1993, from the Massachusetts Chapter of the National Academy of Elder Law Attorneys at the annual meeting at the Sheraton Needham Hotel.

Harshbarger was selected for the award for his "vision and leadership in addressing public policy issues and unmet legal needs that impact elder citizens of the Commonwealth."

"I am honored to receive this first Public Service Law Award," said Attorney General Harshbarger. "Protection of older Americans has been a priority of my administration for the past 10 years, first as District Attorney of Middlesex County and now as Attorney General. The problems that face elders are not someone else's problem—they are our problems, and we must work to ensure that they will live with dignity, financial and physical security, and without fear."

The Public Service Law Award recognizes the Attorney General's commitment of resources to prevent financial exploitation and abuse of the elderly, his dedication to fully provide consumer protection to older Americans, his office's "AGenda: Elderly" newsletter, and his advocacy of new and expanded nursing home regulations.

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## **ELDER PROTECTION PROJECT CONTINUED**

In conclusion, increased collaboration between police and protective services is the most important outcome of the Project's efforts. The trainings provide protective services with a strong foundation and specific contact within police departments to further their outreach efforts. At the same time, police learn their reporting obligations and the ways in which protective services can enhance their community presence. This is a critical alliance.

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*To reprint information from  
the Attorney General's news-  
letter, please contact the  
editor:*

*Ms. Erin O'Sullivan  
(617)727-2200 x2674.*



# AG FILES SUIT AGAINST LIVING TRUST SELLER

**A**ttorney General Scott Harshbarger announced his Consumer Protection and Antitrust Division filed suit in Suffolk Superior Court against a Pittsfield corporation, a Pittsfield salesperson and a South Carolina resident who market "personalized living trusts" for the use of Massachusetts consumers.

The suit alleges that Senior Financial Services, Inc.; John Ben Merchant, of Pittsfield; and Richard Anthony, of South Carolina, doing business as "Anthony Associates," offer a package of documents, including among them a living trust, powers of attorney, wills and health care proxies to Massachusetts consumers as estate planning devices. These documents have allegedly serious legal consequences, and neither Merchant nor Anthony has any formal legal training.

The complaint also alleges that the documents are marketed primarily to elderly Massachusetts consumers, and that Merchant causes consumers to believe that he, Anthony and their organizations are a large nationwide business, somehow connected to or approved by the American Association of Retired Persons (AARP), when these representatives are untrue.

Estate planning is a very serious business, and it is often a special concern to older consumers," said Attorney General Harshbarger. "This action demonstrates our determination to protect consumers from being deceived into buying a product because of a salesperson's claims of representing a well-known organization, or a belief that attorneys and a large company with a nationwide practice are working on their behalf."

The complaint requests that the defendants be enjoined from continuing their present sales tactics, and requests restitution for all Massachusetts consumers who would not have purchased the trust packages had they known the facts.

Assistant Attorney General Carol K. Dietz and Diane L. Szafarowicz, of Harshbarger's Consumer Protection and Antitrust Division, are handling the case.

## *Harshbarger Reaches Settlement that Protects Elder Consumers and Provides Restitution to Injured Massachusetts Residents*

**P**re-Paid Legal Services ("Pre-paid"), an Oklahoma corporation, provided services to an organization known as the "American Association for Senior Citizens" ("AASC"). During 1992, the Attorney General's office investigated the practices and products of the AASC. The office found that AASC was offering products and services, including living trusts, to Massachusetts residents in violation of consumer protection and insurance laws. The Attorney General successfully shut down AASC operations in Massachusetts before they could victimize more seniors.

The primary selling features for AASC were living trusts, and legal services which were provided by Pre-paid. As part of the investigation, the Attorney General found that the provision of Pre-paid's services to Massachusetts' consumers violated both insurance laws, and laws and regulations intended to protect consumers from unfair and deceptive practices.

In a joint effort with several other state Attorneys General, a settlement has been reached with Pre-paid to refund to consumers the amount of money which AASC paid to Pre-paid on each consumer's behalf. Additionally, the settlement requires Pre-paid to comply with all existing state and federal laws in the provision and marketing of their product, including consumer protection and insurance laws.

The settlement with Pre-paid is an example of how the AG utilizes any and all means available to obtain relief for injured Massachusetts consumers.

Anyone aware of AASC conducting business in Massachusetts should contact the AG's office at (617) 727-2200 x3315.



## **ELDER AND DISABLED TASK FORCE FOCUSES ON GUARDIANSHIP REFORM**

**T**he Attorney General's Elder and Disabled Issues Task Force met on January 26th. The Task Force, comprised of elder and disabled consumers, advocates, service providers, and representatives of private industry and state agencies, heard reports from AAG's who work on elder issues in the following areas: economic crimes, consumer protection, patient abuse, legislation, police training on elder abuse, (Elder Protection Project) and health care. In addition, the meeting featured a presentation by Judith Lennett, chief counsel of Cambridge and Somerville Legal Services, who serves as chairperson of the state-wide Guardianship Task Force. Attorney General Scott Harshbarger has identified this area as a priority for legislative reform because of the following concerns about the current system:

- Many guardianships are overboard and are not specifically tailored to the needs of the individual;
- Many potential wards are failing to receive timely and clear notice of the court hearing and of the consequences of the court hearing;
- There is a pressing need for education of attorneys, legislators and judges about guardianship law as well as the physical and mental disabilities experienced by elderly and disabled in these situations;
- Many indigent elderly and disabled people who need guardianships must do without because there are no resources available to provide these services.

The Family and Community Crimes Bureau and Consumer Protection Division are reviewing two pending bills which address these problems: 1. The Guardianship Commission Bill (House 3959) would ensure that indigent elderly and disabled people have access to guardians who are qualified, competent and capable of providing appropriate protection; 2. The "Incapacity" bill (House 3975) proposes procedural reforms to the current system to address issues such as the standards for establishing a guardianship and court oversight.

## **Nursing Home Conference Update**

Attorney General Scott Harshbarger's Medicaid Fraud Control Unit, in conjunction with Executive Office of Elder Affairs, Department of Public Health and the Massachusetts Federation of Nursing Homes, jointly sponsored the third in a series of educational seminars entitled "Keeping Nursing Homes Safe -- Abuse, Neglect and Mistreatment in Massachusetts Nursing Homes: Enforcement and Prevention." The final seminar was attended by nearly 600 nursing home caregivers and administrators at the Holiday Inn in Dedham. A total of 1,300 nursing home professionals have attended this jointly sponsored seminar which will serve as a national model for prosecutors, regulators and nursing home professionals to jointly address the problem of abuse, neglect and mistreatment in long term care facilities.

Harshbarger's MFCU will continue to work with these regulators and representatives of the Massachusetts Federation of Nursing Homes in an ad-hoc advisory group setting to advise the Attorney General of various matters affecting the investigation and prosecution of abuse, neglect, mistreatment and exploitation in nursing homes.



## CORNER

*Amendments to Abuse Protection Law*

As part of its 1994 legislative package, the Family and Community Crimes Bureau has filed House 2056, An Act Relative To Obtaining Restraining Orders for Elders and Other Vulnerable Victims Who Cannot Personally Appear in Court. This bill would amend the abuse prevention act, G.L. c. 209A, to allow a victim who is unable to appear in court without severe physical hardship to obtain a temporary restraining order by phone. The current law has an emergency response system which enables a victim to obtain a restraining order by phone when the court is closed for business. House 2056 would allow an elderly or infirm victim who would need transportation to court in a wheelchair, or who is hospitalized, to obtain a temporary order by phone, using the procedures currently in place for obtaining such relief when the court is closed. In addition, this bill explicitly authorizes the court to go to the victim for the subsequent adversary hearing if the victim is physically unable to go to the court.

These amendments will address the needs of physically infirm victims who are most in need of protection and security. The severity of domestic violence and the tragic frequency of elder abuse in the Commonwealth should require the courts to be open to our vulnerable and frail victims. Passage of this bill will encourage them to seek the same protections which are now accorded to other family violence victims.

*House Bill 2413, an Act Amending Certain Provisions of the Patient Abuse Statute*

On March 14, 1994, members of Attorney General Scott Harshbarger's Medicaid Fraud Control Unit testified before the Criminal Justice Committee relative to patient abuse legislation drafted by the office. The newly drafted legislation defines criminal conduct in terms of "abuse" "neglect" and "mistreatment" among other terms. These definitions will provide courts with guidelines for interpreting the statute. Legislation also protects residents of long term care facilities from exploitation -- substantial monetary and property loss to a resident. It also makes abuse, neglect and mistreatment of residents in long term care facilities a felony. Current statute under which Harshbarger's MFCU prosecutes makes abuse, neglect or mistreatment a misdemeanor.



# CASES CONCERNING ELDERERS

## NURSES AIDE FOUND GUILTY OF VIOLATION OF CIVIL RIGHTS

A Worcester nurses aide was found guilty in Worcester District Court on patient abuse charges stemming from a civil rights violation.

Tammy Burdett, 32, admitted to sufficient facts in the Worcester Jury of Six on three counts of assault and battery, five counts of patient abuse and one civil rights violation. Judge Elliot Zide found the defendant guilty and placed her on two years probation. She was also ordered to perform 150 hours of community service.

"This guilty plea to violation of the civil rights of an elder of Asian origin marks the first time in Massachusetts that our abuse and neglect statute has been used against a nursing home care giver in this context," said Attorney General Harshbarger.

On diverse dates between September, 1991, and February, 1992, Burdett struck two head injury residents on the forehead with her hand. On one occasion, she used a racial slur against the resident during the assault. Burdett also removed the call lights of two other residents, leaving them unable to call for assistance.

Assistant Attorney General Joyce E. Meiklejohn, of Harshbarger's MFCU, prosecuted the case.

## LOWELL WOMAN FOUND GUILTY OF PATIENT ABUSE AT CHELMSFORD HOME

The Medicaid Fraud Control Unit (MFCU) announced that a Lowell woman was found guilty of assault and battery and patient abuse in Lowell District Court.

Doreen Dupont, 29, of Lowell, was found guilty by Judge Gregory Flynn on three counts of assault and battery and three counts of patient abuse.

Judge Flynn sentenced her to six months in the House of Correction, 10 days to serve, and two years probation. Dupont exercised her right to appeal the finding to a Jury of Six session in the District Court.

Dupont was a nurses' aide at the Palm Manor Nursing Home in Chelmsford. Between June and August of 1992, Dupont, on several occasions, choked and kicked three female residents, all in their seventies. She also forced a water hose into one of the resident's mouth.

The Home terminated her employment upon learning of the incidents. They cooperated fully with the investigation.

## PHLEBOTOMIST ADMITS TO PATIENT ABUSE

A Worcester woman admitted to abuse charges in Ayer District Court on a complaint alleging patient abuse and assault and battery of a 95-year-old patient at an Ayer Nursing Home.

Margaret Picchieri, of Worcester, who was employed as a phlebotomist by Medicalab, Inc., admitted to sufficient facts to support a finding of guilty.

Judge Gregory Flynn continued the matter without a finding for one year and ordered the defendant not to seek or accept employment with the elderly. The Judge also ordered that the defendant seek counseling. The Commonwealth had recommended that Picchieri be found guilty and placed on probation for six months.

According to Harshbarger's MFCU, Picchieri was assigned to obtain blood samples from a 95-year-old female resident of the Woodford Nursing Home of Ayer. The resident repeatedly indicated to the defendant that she did not want the procedure performed. Picchieri forcefully withdrew the resident's blood. Residents of a nursing home have the right to refuse medical care and treatment.

Medicalab and the nursing home fully cooperated in the investigation. The defendant was terminated by Medicalab after the incident.



## AG OBTAINS PRELIMINARY INJUNCTION AGAINST NEEDHAM HOME HEALTH CARE PROVIDER

The Public Protection Bureau has obtained a preliminary injunction in Norfolk Superior Court against a Needham home health care provider. She allegedly carried out unfair and deceptive practices while operating her business of arranging to provide home health care workers to predominately elderly consumers.

Maura Cronin, doing business as Claddagh Home Health Care in Needham, was ordered by Norfolk Superior Court to stop taking deposits from consumers on the premise that she would provide them with necessary home health care workers, and then not provide these consumers with the workers promised. The Court also ordered Cronin to stop misrepresenting the backgrounds, skills and licensure status of the health care workers she does provide to consumers.

In a complaint filed by the AG, Cronin was charged with failing to fulfill her promises to : provide skilled health care workers to vulnerable and elderly consumers; to pay health care workers with deposits taken from consumers; to guarantee the replacement of health care workers; and, to refund payments made by consumers when services were not provided.

The injunction obtained by the AG prevents Cronin from continuing these unlawful and harmful activities and also orders Cronin to cease harassing and threatening consumers and health care workers.

The Court issued a preliminary injunction enjoining Cronin from the following:

- Misrepresenting the skills possessed by the health care workers she provides to consumers and their families.

- Making any oral or written representations that she will provide a licensed nurse unless that health care worker she will in fact provide is a licensed nurse.

- Failing to make refunds where she has accepted payment of fees and wages from consumers and their families pursuant to contracts to provide health care workers and she does not provide said services.

- Failing to pay wages to health care workers she provides to consumers and their families.

- Misrepresenting in any way her actual screening, interviewing or hiring process for employees generally or any specific employee.

- Failing to replace health care workers who can no longer work for consumers and their families when she has guaranteed their replacement.

- Destroying, canceling, altering, defacing or transferring any records or documents related to defendant's

business of offering home health care services.

- Harassing or threatening consumers or health care workers in the course of conducting her business.

Assistant Attorneys General Deborah Ecker and Joanna Connolly are handling this matter for Harshbarger.

## SALEM WOMAN PLACED ON PRETRIAL PROBATION FOR ALLEGED ABUSE OF PATIENT IN LYNN NURSING HOME

A Salem woman was placed on pretrial probation today in the Lynn Jury of Six for alleged patient abuse and assault and battery at a Lynn nursing home.

Ann Close, of Salem, was placed on two years pretrial probation by Judge Joseph I. Dever and ordered to sign an agreement that she will not seek or accept employment in a nursing home. If she violates the terms of the agreements, Close can be brought back to court on the charges. The Commonwealth had recommended that a guilty finding be entered and the defendant be placed on probation for one year.

Close allegedly hit a 77-year-old resident of the Life Care Center of the North Shore, Lynn, on March 25, 1993. According to witnesses, Close was feeding the resident who became disruptive. When she allegedly threatened to take away his



breakfast, he grabbed her hand. Close then allegedly became angry and struck the resident two times on his head.

The alleged incident occurred during Close's first week of work at Life Care Center, which cooperated in the Attorney General's investigation and terminated her employment.

## **FORMER GLOUCESTER ATTORNEY INDICTED FOR ALLEGED EMBEZZLEMENT OF OVER \$600,000; SEVERAL ELDERLY VICTIMS**

A Gloucester attorney was arrested in mid-December, following his indictment by an Essex County Grand Jury on multiple charges connected with his alleged embezzlement of over \$600,000 of his former clients' funds, many of whom were elderly victims.

John Sheeran III, of Manchester, a former attorney with a law practice at 122 Main Street in Gloucester, was temporarily suspended from the practice of law by the Massachusetts Board of Bar Overseers, and has since resigned from the practice of law.

"It is particularly disturbing when professionals take advantage of their clients' trust to financially exploit people, said Attorney General Harshbarger. "This office is committed to a vigorous prosecution

of white collar crime, especially in a case such as this, where an attorney has allegedly abused his license at great expense and personal trauma to his clients, several of whom were elderly."

The Essex County Grand Jury returned 45 indictments against Sheeran. He is charged with: 17 counts of forgery, nine counts of the uttering of false writings or deeds, seven counts of larceny over \$250, two counts of embezzlement by a fiduciary, five counts of larceny by continuing scheme and five counts of uttering false checks.

Sheeran allegedly developed several fraudulent means to convert his

remainder for himself. There were 10 alleged victims, several of whom were elderly, and a total of \$603,653 was allegedly embezzled.

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**"It is particularly disturbing when professionals take advantage of their clients' trust to financially exploit people."**

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clients' funds to his own personal use. For example, when acting as Executor to an estate, he allegedly would pay off the minimal estate expenses and place the rest of the money in an account which he would allegedly then use for his own personal use. When settling a client's claim against an insurance company, Sheeran also allegedly misrepresented the amount of the settlement, telling the client they had obtained a lower figure than the settlement amount and keeping the





# **AGENDA: ELDERLY NEWSLETTER**

We hope you enjoyed the latest issue of Attorney General Scott Harshbarger's ELDERLY NEWSLETTER. If you know someone we have overlooked on our mailing list, please add the name at the bottom of this form. In the event that you have moved, please fill in the updated information and mail this form back to Ms. Erin O'Sullivan, Publications Coordinator, One Ashburton Place, 20th Floor, Boston, MA 02108.

If you have any comments or suggestions, please feel free to include them on this form, and return it to the Attorney General's office. Thank you for your cooperation and suggestions.

## **ADDITIONAL MAILING LIST:**

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Office of the Attorney General  
One Ashburton Place  
20th Floor  
Boston, MA 02108-1698



# AGENDA:

## ELDERLY

GOVERNMENT DOCUMENTS  
COLLECTION

OCT 19 1994

### HARSHBARGER FILES PETITION TO VACATE ELDERLY SHERBORN WOMAN'S WILL

University of Massachusetts  
Depository Copy

**A**ttorney General Scott Harshbarger has filed a petition to vacate the will of an elderly Sherborn woman who left her entire estate to a younger man she had known only a few months. Only two days before she signed her will, a psychiatrist had deemed her incompetent.

The petition, filed by the Family and Community Crimes Bureau in the Middlesex Probate Court, invokes a Massachusetts law never before used by the Attorney General's office, which applies in cases where it appears that the person writing the will had no relatives. This law requires that the Attorney General be notified and be made a party to the probate proceedings.

The petition alleges that Stephen Lyons, of Sherborn, failed to make the Attorney General a party to the probate of Marion Cook's will, as required by law. The petition also alleges that Lyons' failure to tell the Probate Court of Mrs. Cook's incompetence was a fraud upon the court.

According to the petition, Lyons allegedly assumed total control of Mrs. Cook's affairs just a few weeks after her husband died in 1989. Mrs. Cook was then in poor health, having suffered prior strokes. At that time, witnesses named in the petition who visited Mrs. Cook noticed her clothing was dirty and her hair was disheveled. A Sherborn Police officer observed that Lyons gave Mrs. Cook instructions about what to wear, when to eat and when to take a nap. Lyons told the officer that he preferred she stop visiting Mrs. Cook.

On April 19, 1989, only six weeks after her husband's death, Mrs. Cook was admitted to Leonard Morse Hospital with symptoms of a stroke. A neurologist who examined her on that day found that she had impaired comprehension and that her speech was difficult to understand and irrelevant to the conversation. On April 24, 1989, Mrs. Cook was evaluated by a psychiatrist and was found incompetent to write a will. The very next day, Mrs. Cook, who was 79 years old at the time, executed a will naming Lyons, almost 50 years her junior, as her executor and sole beneficiary.

At no point in the probate proceedings concerning the will of Marion Cook, did Lyons ever disclose to the Middlesex Probate Court that Marion Cook was incompetent to write a will. Mrs. Cook died in 1990 and her estate was worth at least \$200,000 at the time. Investigators with Harshbarger's Civil Investigation Division concluded a nationwide search and determined that Mrs. Cook had no relatives.



To the Citizens of the Commonwealth:

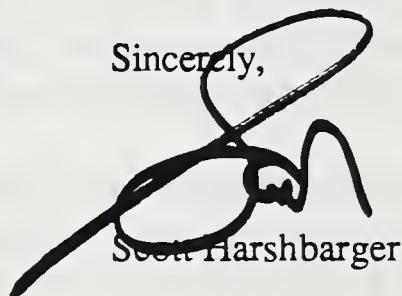
The protection we have established in the Attorney General's office for our older citizens in the Commonwealth has made me very proud. My Family and Community Crimes Bureau (FCCB) and Medicaid Fraud Control Unit (MFCU) have been innovative and productive in their approaches to defending the elderly. One example occurred recently when the FCCB invoked a law never used by the AG's office to petition the court to vacate an elderly woman's will. It is instances such as these--where we make an extra effort--that a significant difference can be made in the lives and livelihood of our older citizens.

It is an unfortunate reality that older generations fall prey to scams easier than any other age group in the nation. One particular scam involving hearing aid advertisement practices was eliminated by the work of several AG's across the country. Our office joined together with 35 other states to protect the elderly from deceptive hearing aid advertising practices. Seniors are also vulnerable to the illegal practices of some lawyers who have taken advantage of their trust. My Economic Crimes Division has cracked down on many of these attorneys and will continue to indict those who abuse their power.

The office has also been involved in safeguarding the elder population by releasing revised long-term care regulations. The drafted regulations include topics such as discharge and transfer, inclusion of the chronic care and rehabilitative hospitals, and conformity with the federal law called "OBRA."

I am excited about the elder issue work done in the AG's office and will continue to serve the elderly in a manner that they deserve. I hope you enjoy the news that is in each issue of AGenda: Elderly. As always, we welcome your comments and suggestions.

Sincerely,



Scott Harshbarger

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## **FORMER WAYLAND ATTORNEY EMBEZZLES \$300,000 FROM ELDERLY CLIENTS**

**A** former partner with the now-defunct law firm of Gaston Snow & Eli Bartlett was sentenced to the House of Correction after pleading guilty in Suffolk Superior Court to the embezzlement of approximately \$300,000 from clients of the firm, several of whom were elderly.

Robert Bullard Jr., of Wayland, pled guilty to 22 counts of larceny over \$250, 22 counts of embezzlement by a fiduciary, one count of attempted embezzlement by a fiduciary and three counts of uttering a forged instrument.

Judge Charles M. Grabau sentenced Bullard to two years in the House of Correction, committed, for one count of uttering; two years in the House of Corrections, concurrent with the uttering sentence, for one count of larceny; and five to seven years in state prison, from and after, suspended for two years with probation, for the first count of embezzlement by a fiduciary. The attempted embezzlement by a fiduciary was guilty-filed. The Commonwealth recommended a nine to ten year state prison sentence.

Bullard was indicted by a Suffolk County Grand Jury in August, 1993 for thefts from clients between 1987 and 1990. Three of the victims were elderly women who had entrusted him with their financial affairs.

Through the periodic transfer of funds from his clients' accounts to his personal account, Bullard embezzled over \$100,000 from a Belmont woman in her late seventies, and from her estate after her death at age 80. He had also attempted to embezzle approximately \$500,000 from the victim by uttering her forged signature on a trust document, and making himself the designated beneficiary.

Bullard also embezzled approximately \$100,000 from two Cambridge sisters in their eighties by writing checks on accounts he controlled for their benefit, or on accounts he had access to by power of attorney, and depositing them in his personal account. In addition, he embezzled \$100,000 from five other estates and trusts. Bullard used the embezzled money for personal use.

Bullard resigned from the bar and paid back the money he took after these embezzlements became known.

### **NEWSLETTER CONTRIBUTION**

We hope this newsletter is both informative and useful. Its success depends upon your input. We must join together to combat abuse against elders in our society. The next issue of the elder newsletter will be published in December 1994. Contributions to the newsletter are accepted through the first week of November. Contributions to the newsletter can be forwarded to:

Erin O'Sullivan  
Publications Coordinator  
Attorney General's Office  
One Ashburton Place  
Boston, MA 02108.



# ELDER ABUSE CASES

## SPRINGFIELD WOMAN ADMITS TO ABUSE OF ELDERLY WOMAN

A Springfield woman admitted to sufficient facts in a case where she was charged with abuse and assault and battery of a 67 year old nursing home resident.

Pauline Edwards, of Springfield, admitted to sufficient facts before the Chicopee Jury of Six. She was charged with one count each of patient abuse, assault and battery and intimidation of a witness. Judge Robert Kumor continued the case without a finding for one year. Edwards is also required to surrender her nurses aide license for one year.

According to the complaint filed in March, 1994, Edwards allegedly assaulted a 67 year old male resident of the Valley View Nursing Home in Westfield. The complaint alleged that Edwards punched the resident in the neck with a closed fist while changing him one evening in July, 1993. The alleged actions resulted in a bruise to the resident's neck. Edwards was terminated from her employment at the home as soon as the home became aware of the allegation.

## WOMAN SENTENCED FOR PATIENT ABUSE AT EAST BRIDGEWATER NURSING HOME

A Bridgewater woman was sentenced in Hingham District Court for abuse of a 69 year old man in the Forge Pond Nursing Home in East Bridgewater.

Susan Burke, of Bridgewater, admitted to sufficient facts to make a finding of guilty and one count of assault and battery and one count of patient abuse on July 30, 1993. Brockton District Court Judge Paul Ryan continued both counts without a finding for one year.

If she is found guilty of a similar offense within the next year, she will be sentenced to a year in the House of Correction, which would be suspended for a year.

Harshbarger recommended that Burke serve a six-month sentence. In addition, the Commonwealth hoped to bar Burke from working in a nursing home for one year.

On August 15, 1992, Burke was the supervising nurse for the evening shift. She participated in tying the victim into his wheelchair, pouring various substances over his head and spraying shaving cream over his body.

The Forge Pond Nursing Home suspended Burke once the matter

was reported, and subsequently terminated her employment. They cooperated fully with the AG's investigation.

## TEWKSBURY MAN INDICTED FOR ABUSE AND INDECENT ASSAULT AND BATTERY OF ELDERLY BILLERICA NURSING HOME RESIDENT

Harshbarger's MFCU announced that a Tewksbury man was indicted by a Middlesex County Grand Jury for the alleged patient abuse and indecent assault and battery of a 68 year old mentally retarded male resident of a Billerica nursing home.

Patrick O'Neil, an Oblate Brother, who resides at the Oblate Father's Novitates in Tewksbury, was indicted on one count of patient abuse and indecent assault and battery for allegedly sexually assaulting a resident of the Country View Nursing Home, located in Billerica.

The assault allegedly took place on July 29, 1993, at the defendants's Oblate residence, where he allegedly fondled the victim.

The alleged assault was reported to the Department of Public



Health, which forwarded the complaint to the MFCU. The Country View Nursing Home cooperated fully with MFCU's investigation.

### **SOMERSET WOMAN CHARGED IN THEFT OF NURSING HOME ACCOUNTS TOTALLING \$75,000**

Attorney General Scott Harshbarger's Medicaid Fraud Control Unit charged a former bookkeeper from Somerset with stealing funds which may total as much as \$75,000 from elderly residents of a Fairhaven nursing home.

The Somerset resident was charged with larceny over \$250 on June 27, 1994. She was arrested outside her home by Fairhaven police and was arraigned in New Bedford District Court.

MFCU investigators and police allege that the former bookkeeper and office manager at Nichols House Nursing Home, of Fairhaven, was involved in an embezzlement scheme. She allegedly withdrew money from residents' trust accounts at the 100-bed facility where she worked. MFCU investigators estimate that the amount taken between February of 1993 and May of 1994 may exceed \$75,000.

### **BROCKTON WOMAN PLEADS GUILTY TO PATIENT ABUSE**

A Brockton woman charged with patient abuse at a Braintree nursing home pleaded guilty in March, according to MFCU prosecutors.

Marie Maurice, or Brockton, pleaded guilty before Judge Geraldine Lombardo in Quincy District Court to single counts of patient abuse and assault and battery.

The guilty pleas come after an investigation by Harshbarger's Medicaid Fraud Control Unit, which investigated allegations that Maurice slapped and pushed two Alzheimer patients in December of 1992 at the Braintree Manor Nursing Home. The two residents, a male and a female, were ages 90 and 85 respectively.

Maurice pleaded guilty to slapping an 85-year-old female patient twice on the buttocks on December 9, 1992 and slapping the face of an 89-year-old male resident two days later before pushing his face into a pillow.

Maurice was sentenced to one year of probation after pleading guilty to the charges.

### **SUICIDE IN LATER LIFE: RECOGNIZING THE WARNING SIGNS**

*A TAP Workshop with  
Nancy J. Osgood, Ph.D.*

**Thursday, September 22  
10am to 4pm  
Monatiquot Village  
Braintree**

Suicide in older adults is a tragedy, but in many cases it is also preventable. Elderly Americans take their own lives for a variety of reasons; illness, loss, alcoholism, and loneliness, and it is easy to miss the warning signs.

Nancy J. Osgood, Ph.D., Associate Professor of Gerontology at the Medical College of Virginia, will join TAP in this workshop for property managers, service coordinators and others who need to be alert to warning signs of suicide.

For further information, contact Denise Green at (617) 451-3480 x476.

There is a \$35 fee for non-TAP members.



## REVISED LONG TERM CARE REGULATIONS RELEASED

**T**he second draft of the Attorney General's Revised Long Term Care Regulations was released on May 18, 1994, at the quarterly meeting of the Elder and Disabled Task Force. These regulations have not been amended since they were first promulgated in 1978. At that time, they broke new ground in establishing standards for the protection of nursing home residents. However, the long term care industry has undergone many changes in the last sixteen years, such as the advent of the federal law called "OBRA" which regulates the industry, changing demographics of the elder population, spiralling health care costs, the narrowing of Medicaid eligibility criteria, and the new emphasis on Medicare maximization--to name a few. The landscape of long term care has changed, and the Attorney General's regulations have been further revised to reflect these developments.

In drafting the second version of these regulations, careful consideration was given to the testimony and written comments which were provided at or after the public hearing in April of 1993. The second draft included substantive changes in the following areas: non-discriminatory access to long term care; discharge and transfer; inclusion of the chronic care and rehabilitative hospitals; and conformity with the federal law called "OBRA." Final written comments from the general public have been received and are being reviewed; it is anticipated that the regulations will be finally promulgated in the early fall. The second draft was written by Carol Dietz, Assistant Attorney General, Consumer Protection Division and Susan Motika, Assistant Attorney General, Family and Community Crimes Bureau. If you would like a copy of the draft regulations or if you have any questions about them, please contact Susan Motika at (617) 727-2200 x2876.

## AG'S OFFICE CONTRIBUTES TO JOURNAL OF ELDER ABUSE AND NEGLECT

**T**he 1994 summer issues of the Journal of Elder Abuse and Neglect feature articles written by participants in the conference, "Prevention and Protection: Empowering Elders and Persons with Disabilities," sponsored jointly by the Attorney General's office and the Executive Office of Elder Affairs on May 19, 1992. A major goal of this issue of the Journal is to share with readers some of the knowledge gained from the work of several conference presenters.

A few staff members from the AG's office submitted articles for this issue: Jane Tewksbury, former Chief of the Family and Community Crimes Bureau, co-authored an article with Donna Reulbach from the Executive Office of Elder Affairs entitled, "Collaboration Between Protective Services and Law Enforcement: The Massachusetts Model." Stan Eichner, Director of the Disabilities Rights Project in the AG's office co-authored an article with Kathryn J. Gips from the Massachusetts Office on Disability entitled, "The Americans with Disabilities Act: A Powerful Tool for Change." Finally, as the guest editor for this issue of the Journal of Elder Abuse and Neglect, Attorney General Scott Harshbarger provided the journal with an introductory article, "Perspectives: Guest Editor's View." In this article, the AG highlighted some of the initiatives that can be undertaken by law enforcement to protect the elderly from abuse, neglect and financial exploitation.



## AG'S MFCU ESTABLISHES LONG-TERM CARE NEGLECT/ ABUSE TASK FORCE

Attorney General Scott Harshbarger announced that his Medicaid Fraud Control Unit (MFCU) has established a long-term care neglect/abuse task force to discuss issues centering around abuse, neglect and mistreatment in Massachusetts nursing homes. The task force, chaired by Assistant Attorney General Joyce Meiklejohn, is composed of industry representatives, regulators and prosecutors. Assistant Attorney General Meiklejohn is Coordinator of MFCU's Abuse/Neglect Prosecution Team. A variety of issues are being discussed with the goal of establishing appropriate reporting protocols and coordination of abuse, neglect and mistreatment referrals to the Office of the Attorney General. The group has met twice since June and is scheduled to meet at Westboro Nursing Home later this summer.

Issues currently being addressed include:

- Prosecutorial authority for abuse, neglect and mistreatment allegations
- Revisions of forms used to process referrals;
- Establishing reporting protocol;
- Distinguishing from and defining physical, psychological, neglect, mistreatment, and financial exploitation;
- Criminal liability v. civil negligence;
- Nurse-Aide registry protocols;
- Applicable standards for investigation and prosecution of cases;
- Expanding abuse, neglect and mistreatment investigations to other facilities (i.e. home health);
- Inter-disciplinary team to advise investigators/prosecutors;
- Whistle-blower statute and employee protections;
- Termination practices of Certified Nurse-Aides.

Attorney General Harshbarger complimented the Executive Office of Elder Affairs, Department of Public Health and the Federation of Nursing Homes for their commitment to eliminate abuse, neglect and mistreatment in Massachusetts long term care facilities.

Harshbarger's MFCU welcomes inquiries, comments and advice to this group. Contact may be made directly to Assistant Attorney General Joyce Meiklejohn, Medicaid Fraud Control Unit, 131 Tremont Street, Boston, MA (617) 727-2200 x3821.

# HEARING AID NEWS

## HEARING AID DEALER SENTENCED TO HOUSE OF CORRECTION

Stephen J. Favorito pled guilty in Suffolk County Superior Court to criminal contempt for violating a Consent Judgment in which he was enjoined from failing to deliver hearing aids to his customers within the time promised. Judge Charles Grabau sentenced Favorito to nine months in the House of Correction.

This criminal prosecution follows a suit against Mr. Favorito brought by the Public Protection Bureau's Consumer Protection and Antitrust Division in December, 1991. He was accused of committing a number of unfair and deceptive business practices, such as selling hearing aids to customers who paid for new ones, selling defective hearing aids, and failing to deliver the aids to consumers within the time promised. The Consent Judgment enjoined him from engaging in the same kind of behavior, and required him to pay restitution and civil penalties.

Shortly after signing the Consent Judgment, Favorito began to violate its terms. The Attorney General received numerous complaints from consumers who paid in full up front for hearing aids which Favorito never delivered. Altogether, the Attorney General's Consumer Complaint's Section received approximately 100 complaints. The case was prosecuted as a

criminal case because the conventional civil remedies did not deter Mr. Favorito from victimizing this very vulnerable group of elderly and disabled individuals.

Assistant Attorneys General David Marcus and Anne Berlin prosecuted this case under the direction of Patricia Bernstein, Chief Prosecutor of the Public Protection Bureau, with the assistance of the Civil Investigative Division.

## HARSHBARGER JOINS 35 OTHER STATES IN CHANGING MIRACLE EAR'S HEARING AID ADVERTISING

Harshbarger and 35 other Attorneys General entered into an Assurance of Discontinuance with Dahlberg, Inc., a Minnesota corporation, concerning its advertising for Dahlberg's Miracle Ear hearing aids and Clarifier circuits. The settlement requires Dahlberg to change its advertising and to pay \$700,000 to 15 Attorneys General (approximately \$46,666 per state).

In its advertisements for its hearing aids, Dahlberg represented that its hearing aids could eliminate unwanted background noise, allowing hearing aid users to understand and enjoy conversation, even in crowded and noisy environments. The Attorney General allege that these advertisements were false and misleading, since no hearing aid can "focus" on sounds an individual wants to hear or eliminate background noise.

Under the settlement, Dahlberg must disclose in future advertising that hearing aids may not provide the same benefits to most or all users, and that the overall benefit provided by hearing aids may demand on proper fit, degree or severity of hearing loss and accuracy of patient evaluation. In advertisements featuring the Clarifier, the company must also disclose that the Clarifier is an option and that understanding speech may still be difficult in noisy settings.

Federal authorities have also been investigating Dahlberg's advertising practices. On April 16, 1993, the United States Food and Drug Administration (FDA) issued a warning letter to Dahlberg, demanding that Dahlberg cease all sales of its hearing aids and the Clarifier circuit, until it is able to provide adequate clinical substantiation to the FDA for its claims. On January 25, 1994, the FTC sued Dahlberg for false representations regarding superiority claims and the ability of Clarifier hearing aids to focus its amplification only on the sounds the user wants to hear.

Dahlberg, one of the top three manufacturers of hearing aids in the country, does not admit to any wrongdoing.

Assistant Attorney General Josefina Martinez and Ernest L. Sarason, Jr., of Harshbarger's Consumer Protection and Antitrust Division, handling the matter.



# ELDERLY PROTECTION PROJECT UPDATE

Attorney General Harshbarger is please to report that funding for the Elderly Protection Project has been extended into fiscal year 1995 by the Massachusetts Committee on Criminal Justice.

For its efforts, the Project has recently received national recognition. The Bureau of Justice Assistance, United States Department of Justice, recognized the Elderly Protection Project as a national model for police training. Project Director Scheft spoke on behalf of the Attorney General at a national conference in Seattle on May 11th. Scheft was also invited to speak at a national conference in Clearwater, Florida on May 25th concerning ways that training can strengthen the police/elder protective services alliance. Finally, the National District Attorney's Association has selected the Project as a national model and plans to send representatives to study the Project's efforts in the near future.

During the past year, the Project presented sixteen, 2-day, advanced law enforcement trainings around the state. The trainings involved 470 police officers from over 200 departments along with 63 protective service workers from all of the 27 protective service agencies in Massachusetts, and 38 other professionals from various agencies.

Each course participant received a 183 page training manual. This may be the Projects' most enduring accomplishment. The manual received excellent reviews by participants, and a number of protective service agencies have decided to use the manual as a training tool. The manual has been distributed to the AARP Criminal Justice Section; the National District Attorneys' Association; the National Association of Attorneys General; the National Sheriff's Association; the United States Postal Inspection Service; New Jersey, Florida and Utah elder protective services; and the South Carolina Law Enforcement Training Center among others.

Evaluations of the advanced law enforcement seminar have also been consistently excellent, with 74% of the participants giving this course the highest possible rating for content, delivery and quality of training materials. 77% of participants strongly believe that this training "increased (their) sensitivity to older people."

The Project also trained 829 police recruits at 12 different training academies. This far exceeded the Project's original goal of reaching 500 recruits. Academy directors at the Massachusetts Criminal Justice Training Council, the Boston Police Department, and the State Police have informed the Project that their recruits have uniformly praised their instruction on elder issues.

In the upcoming year, the Project will engage in the following initiatives: continued police officer training at the recruit, in-service and advanced levels; training for prosecutors and victim witness advocates; producing a roll-call video for police officers on Alzheimer's patients in the community; police training on the use of elder volunteers to supplement law enforcement services; and instructing bank employees on how to detect and prevent elder financial exploitation.

*To reprint information from the  
Attorney General's Elderly newsletter,  
please contact the editor:*

**Ms. Erin O'Sullivan**  
**(617) 727-2200 x2674**

# **AGENDA: ELDERLY NEWSLETTER**

We hope you enjoyed the latest issue of Attorney General Scott Harshbarger's ELDERLY NEWSLETTER. If you know someone we have overlooked on our mailing list, please add the name at the bottom of this form. In the event that you have moved, please fill in the updated information and mail this form back to Ms. Erin O'Sullivan, Publications Coordinator, One Ashburton Place, 20th Floor, Boston, MA 02108.

If you have any comments or suggestions, please feel free to include them on this form, and return it to the Attorney General's office. Thank you for your cooperation and suggestions.

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